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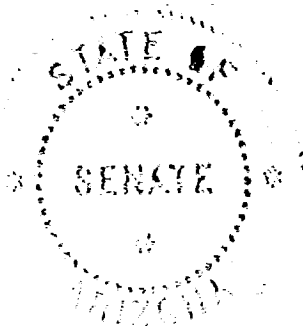
CHAPTER 61

HOUSE BILL 2040

AN ACT

AMENDING SECTIONS 42-5009, 42-5061, 42-5075, 42-14203, 42-14255, 42-14308, 42-14404, 43-301, 43-1021, 43-1022, 43-1029 AND 43-1121, ARIZONA REVISED STATUTES; REPEALING SECTION 43-1075, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5009, Arizona Revised Statutes, is amended to
3 read:

4 42-5009. Certificates establishing deductions; liability for
5 making false certificate

6 A. A person who conducts any business classified under article 2 of
7 this chapter may establish entitlement to the allowable deductions from the
8 tax base of that business by both:

9 1. Marking the invoice for the transaction to indicate that the gross
10 proceeds of sales or gross income derived from the transaction was deducted
11 from the tax base.

12 2. Obtaining a certificate executed by the purchaser indicating the
13 name and address of the purchaser, the precise nature of the business of the
14 purchaser, the purpose for which the purchase was made, the necessary facts
15 to establish the appropriate deduction and the tax license number of the
16 purchaser to the extent the deduction depends on the purchaser conducting
17 business classified under article 2 of this chapter and a certification that
18 the person executing the certificate is authorized to do so on behalf of the
19 purchaser. The certificate may be disregarded if the seller has reason to
20 believe that the information contained in the certificate is not accurate or
21 complete.

22 B. A person who does not comply with subsection A of this section may
23 establish entitlement to the deduction by presenting facts necessary to
24 support the entitlement, but the burden of proof is on that person.

25 C. The department may prescribe a form for the certificate described
26 in subsection A of this section. Under such rules as it may prescribe, the
27 department may also describe transactions with respect to which a person is
28 not entitled to rely solely on the information contained in the certificate
29 provided for in subsection A of this section but must instead obtain such
30 additional information as required by the rules in order to be entitled to
31 the deduction.

32 D. If a seller is entitled to a deduction by complying with subsection
33 A of this section, the department may require the purchaser which caused the
34 execution of the certificate to establish the accuracy and completeness of
35 the information required to be contained in the certificate which would
36 entitle the seller to the deduction. If the purchaser cannot establish the
37 accuracy and completeness of the information, the purchaser is liable in an
38 amount equal to any tax, penalty and interest which the seller would have
39 been required to pay under this article if the seller had not complied with
40 subsection A of this section. Payment of the amount under this subsection
41 exempts the purchaser from liability for any tax imposed under article 4 of
42 this chapter. The amount shall be treated as a transaction privilege tax to
43 the purchaser and as tax revenues collected from the seller in order to
44 designate the distribution base for purposes of section 42-5029.

1 E. If a seller is entitled to a deduction by complying with subsection
2 B of this section, the department may require the purchaser to establish the
3 accuracy and completeness of the information provided to the seller that
4 entitled the seller to the deduction. If the purchaser cannot establish the
5 accuracy and completeness of the information, the purchaser is liable in an
6 amount equal to any tax, penalty and interest that the seller would have been
7 required to pay under this article if the seller had not complied with
8 subsection B of this section. Payment of the amount under this subsection
9 exempts the purchaser from liability for any tax imposed under article 4 of
10 this chapter. The amount shall be treated as a transaction privilege tax to
11 the purchaser and as tax revenues collected from the seller in order to
12 designate the distribution base for purposes of section 42-5029.

13 F. The department may prescribe a form for a certificate used to
14 establish entitlement to the deductions described in section 42-5061,
15 subsection A, paragraph 48 47 and section 42-5063, subsection B, paragraph
16 3. Under rules the department may prescribe, the department may also require
17 additional information for the seller to be entitled to the deduction. If
18 a seller is entitled to the deductions described in section 42-5061,
19 subsection A, paragraph 48 47 and section 42-5063, subsection B, paragraph
20 3, the department may require the purchaser who executed the certificate to
21 establish the accuracy and completeness of the information contained in the
22 certificate that would entitle the seller to the deduction. If the purchaser
23 cannot establish the accuracy and completeness of the information, the
24 purchaser is liable in an amount equal to any tax, penalty and interest that
25 the seller would have been required to pay under this article. Payment of
26 the amount under this subsection exempts the purchaser from liability for any
27 tax imposed under article 4 of this chapter. The amount shall be treated as
28 a transaction privilege tax to the purchaser and as tax revenues collected
29 from the seller in order to designate the distribution base for purposes of
30 section 42-5029.

31 G. If a seller claims a deduction under section 42-5061, subsection
32 A, paragraph 25 and establishes entitlement to the deduction with an
33 exemption letter that the purchaser received from the department and the
34 exemption letter was based on a contingent event, the department may require
35 the purchaser that received the exemption letter to establish the
36 satisfaction of the contingent event within a reasonable time. If the
37 purchaser cannot establish the satisfaction of the event, the purchaser is
38 liable in an amount equal to any tax, penalty and interest that the seller
39 would have been required to pay under this article if the seller had not been
40 furnished the exemption letter. Payment of the amount under this subsection
41 exempts the purchaser from liability for any tax imposed under article 4 of
42 this chapter. The amount shall be treated as a transaction privilege tax to
43 the purchaser and as tax revenues collected from the seller in order to
44 designate the distribution base for purposes of section 42-5029. FOR THE
45 PURPOSES OF THIS SUBSECTION, "REASONABLE TIME" MEANS A TIME LIMITATION THAT

1 THE DEPARTMENT DETERMINES AND THAT DOES NOT EXCEED THE TIME LIMITATIONS
2 PURSUANT TO SECTION 42-1104.

3 Sec. 2. Section 42-5061, Arizona Revised Statutes, is amended to read:
4 42-5061. Retail classification; definitions

5 A. The retail classification is comprised of the business of selling
6 tangible personal property at retail. The tax base for the retail
7 classification is the gross proceeds of sales or gross income derived from
8 the business. The tax imposed on the retail classification does not apply
9 to the gross proceeds of sales or gross income from:

10 1. Professional or personal service occupations or businesses which
11 involve sales or transfers of tangible personal property only as
12 inconsequential elements.

13 2. Services rendered in addition to selling tangible personal property
14 at retail.

15 3. Sales of warranty or service contracts. The storage, use or
16 consumption of tangible personal property provided under the conditions of
17 such contracts is subject to tax under section 42-5156.

18 4. Sales of tangible personal property by any nonprofit organization
19 organized and operated exclusively for charitable purposes and recognized by
20 the United States internal revenue service under section 501(c)(3) of the
21 internal revenue code.

22 5. Sales to persons engaged in business classified under the
23 restaurant classification of articles used by human beings for food, drink
24 or condiment, whether simple, mixed or compounded.

25 6. Business activity which is properly included in any other business
26 classification which is taxable under article 1 of this chapter.

27 7. The sale of stocks and bonds.

28 8. Drugs and medical oxygen, including delivery hose, mask or tent,
29 regulator and tank, on the prescription of a member of the medical, dental
30 or veterinarian profession who is licensed by law to administer such
31 substances.

32 9. Prosthetic appliances as defined in section 23-501 prescribed or
33 recommended by a health professional licensed pursuant to title 32, chapter
34 7, 8, 11, 13, 14, 15, 16, 17 or 29.

35 10. Insulin, insulin syringes and glucose test strips.

36 11. Prescription eyeglasses or contact lenses.

37 12. Hearing aids as defined in section 36-1901.

38 13. Durable medical equipment which has a centers for medicare and
39 medicaid services common procedure code, is designated reimbursable by
40 medicare, is prescribed by a person who is licensed under title 32, chapter
41 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and
42 customarily used to serve a medical purpose, is generally not useful to a
43 person in the absence of illness or injury and is appropriate for use in the
44 home.

1 14. Sales to nonresidents of this state for use outside this state if
2 the vendor ships or delivers the tangible personal property out of this
3 state.

4 15. Food, as provided in and subject to the conditions of article 3 of
5 this chapter and section 42-5074.

6 16. Items purchased with United States department of agriculture food
7 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.
8 958) or food instruments issued under section 17 of the child nutrition act
9 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code
10 section 1786).

11 17. Textbooks by any bookstore that are required by any state
12 university or community college.

13 18. Food and drink to a person who is engaged in business which is
14 classified under the restaurant classification and which provides such food
15 and drink without monetary charge to its employees for their own consumption
16 on the premises during the employees' hours of employment.

17 19. Articles of food, drink or condiment and accessory tangible
18 personal property to a school district if such articles and accessory
19 tangible personal property are to be prepared and served to persons for
20 consumption on the premises of a public school within the district during
21 school hours.

22 20. Lottery tickets or shares pursuant to title 5, chapter 5,
23 article 1.

24 21. The sale of precious metal bullion and monetized bullion to the
25 ultimate consumer, but the sale of coins or other forms of money for
26 manufacture into jewelry or works of art is subject to the tax. In this
27 paragraph:

28 (a) "Monetized bullion" means coins and other forms of money which are
29 manufactured from gold, silver or other metals and which have been or are
30 used as a medium of exchange in this or another state, the United States or
31 a foreign nation.

32 (b) "Precious metal bullion" means precious metal, including gold,
33 silver, platinum, rhodium and palladium, which has been smelted or refined
34 so that its value depends on its contents and not on its form.

35 22. Motor vehicle fuel and use fuel which are subject to a tax imposed
36 under title 28, chapter 16, article 1, sales of use fuel to a holder of a
37 valid single trip use fuel tax permit issued under section 28-5739, sales of
38 aviation fuel which are subject to the tax imposed under section 28-8344 and
39 sales of jet fuel which are subject to the tax imposed under article 8 of
40 this chapter.

41 23. Tangible personal property sold to a person engaged in the business
42 of leasing or renting such property under the personal property rental
43 classification if such property is to be leased or rented by such person.

1 24. Tangible personal property sold in interstate or foreign commerce
2 if prohibited from being so taxed by the Constitution of the United States
3 or the constitution of this state.

4 25. Tangible personal property sold to:

5 (a) A qualifying hospital as defined in section 42-5001.

6 (b) A qualifying health care organization as defined in section
7 42-5001 if the tangible personal property is used by the organization solely
8 to provide health and medical related educational and charitable services.

9 (c) A qualifying health care organization as defined in section
10 42-5001 if the organization is dedicated to providing educational,
11 therapeutic, rehabilitative and family medical education training for blind,
12 visually impaired and multihandicapped children from the time of birth to age
13 twenty-one.

14 (d) A qualifying community health center as defined in section
15 42-5001.

16 (e) A nonprofit charitable organization that has qualified under
17 section 501(c)(3) of the internal revenue code and that regularly serves
18 meals to the needy and indigent on a continuing basis at no cost.

19 (f) For taxable periods beginning from and after June 30, 2001, a
20 nonprofit charitable organization that has qualified under section 501(c)(3)
21 of the internal revenue code and that provides residential apartment housing
22 for low income persons over sixty-two years of age in a facility that
23 qualifies for a federal housing subsidy, if the tangible personal property
24 is used by the organization solely to provide residential apartment housing
25 for low income persons over sixty-two years of age in a facility that
26 qualifies for a federal housing subsidy.

27 26. Magazines or other periodicals or other publications by this state
28 to encourage tourist travel.

29 27. Tangible personal property sold to a person that is subject to tax
30 under this article by reason of being engaged in business classified under
31 the prime contracting classification under section 42-5075, or to a
32 subcontractor working under the control of a prime contractor that is subject
33 to tax under article 1 of this chapter, if the property so sold is any of the
34 following:

35 (a) Incorporated or fabricated by the person into any real property,
36 structure, project, development or improvement as part of the business.

37 (b) Used in environmental response or remediation activities under
38 section 42-5075, subsection B, paragraph 6.

39 (c) Incorporated or fabricated by the person into any lake facility
40 development in a commercial enhancement reuse district under conditions
41 prescribed for the deduction allowed by section 42-5075, subsection B,
42 paragraph 8.

43 28. The sale of a motor vehicle to:

44 (a) A nonresident of this state if the purchaser's state of residence
45 does not allow a corresponding use tax exemption to the tax imposed by

1 article 1 of this chapter and if the nonresident has secured a special
2 thirty-day nonresident registration of the vehicle by applying according to
3 section 28-2154.

4 (b) An enrolled member of an Indian tribe who resides on the Indian
5 reservation established for that tribe.

6 29. Tangible personal property purchased in this state by a nonprofit
7 charitable organization that has qualified under section 501(c)(3) of the
8 United States internal revenue code and that engages in and uses such
9 property exclusively IN PROGRAMS for MENTALLY OR PHYSICALLY HANDICAPPED
10 PERSONS IF THE PROGRAMS ARE EXCLUSIVELY FOR training, job placement, or
11 rehabilitation programs or testing for ~~mentally or physically handicapped~~
12 persons.

13 30. Sales of tangible personal property by a nonprofit organization
14 that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6)
15 of the internal revenue code if the organization is associated with a major
16 league baseball team or a national touring professional golfing association
17 and no part of the organization's net earnings inures to the benefit of any
18 private shareholder or individual.

19 31. Sales of commodities, as defined by title 7 United States Code
20 section 2, that are consigned for resale in a warehouse in this state in or
21 from which the commodity is deliverable on a contract for future delivery
22 subject to the rules of a commodity market regulated by the United States
23 commodity futures trading commission.

24 32. Sales of tangible personal property by a nonprofit organization
25 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
26 501(c)(7) or 501(c)(8) of the internal revenue code if the organization
27 sponsors or operates a rodeo featuring primarily farm and ranch animals and
28 no part of the organization's net earnings inures to the benefit of any
29 private shareholder or individual.

30 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other
31 propagative material to persons who use those items to commercially produce
32 agricultural, horticultural, viticultural or floricultural crops in this
33 state.

34 34. Machinery, equipment, technology or related supplies that are only
35 useful to assist a person who is physically disabled as defined in section
36 46-191, has a developmental disability as defined in section 36-551 or has
37 a head injury as defined in section 41-3201 to be more independent and
38 functional.

39 35. Sales of tangible personal property that is shipped or delivered
40 directly to a destination outside the United States for use in that foreign
41 country.

42 36. Sales of natural gas or liquefied petroleum gas used to propel a
43 motor vehicle.

1 37. Paper machine clothing, such as forming fabrics and dryer felts,
2 sold to a paper manufacturer and directly used or consumed in paper
3 manufacturing.

4 38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity
5 sold to a qualified environmental technology manufacturer, producer or
6 processor as defined in section 41-1514.02 and directly used or consumed in
7 the generation or provision of on-site power or energy solely for
8 environmental technology manufacturing, producing or processing or
9 environmental protection. This paragraph shall apply for fifteen full
10 consecutive calendar or fiscal years from the date the first paper
11 manufacturing machine is placed in service. In the case of an environmental
12 technology manufacturer, producer or processor who does not manufacture
13 paper, the time period shall begin with the date the first manufacturing,
14 processing or production equipment is placed in service.

15 39. Sales of liquid, solid or gaseous chemicals used in manufacturing,
16 processing, fabricating, mining, refining, metallurgical operations, research
17 and development and, beginning on January 1, 1999, printing, if using or
18 consuming the chemicals, alone or as part of an integrated system of
19 chemicals, involves direct contact with the materials from which the product
20 is produced for the purpose of causing or permitting a chemical or physical
21 change to occur in the materials as part of the production process. This
22 paragraph does not include chemicals that are used or consumed in activities
23 such as packaging, storage or transportation but does not affect any
24 deduction for such chemicals that is otherwise provided by this section. For
25 purposes of this paragraph, "printing" means a commercial printing operation
26 and includes job printing, engraving, embossing, copying and bookbinding.

27 40. Through December 31, 1994, personal property liquidation
28 transactions, conducted by a personal property liquidator. From and after
29 December 31, 1994, personal property liquidation transactions shall be
30 taxable under this section provided that nothing in this subsection shall be
31 construed to authorize the taxation of casual activities or transactions
32 under this chapter. In this paragraph:

33 (a) "Personal property liquidation transaction" means a sale of
34 personal property made by a personal property liquidator acting solely on
35 behalf of the owner of the personal property sold at the dwelling of the
36 owner or upon the death of any owner, on behalf of the surviving spouse, if
37 any, any devisee or heir or the personal representative of the estate of the
38 deceased, if one has been appointed.

39 (b) "Personal property liquidator" means a person who is retained to
40 conduct a sale in a personal property liquidation transaction.

41 41. Sales of food, drink and condiment for consumption within the
42 premises of any prison, jail or other institution under the jurisdiction of
43 the state department of corrections, the department of public safety, the
44 department of juvenile corrections or a county sheriff.

1 42. A motor vehicle and any repair and replacement parts and tangible
2 personal property becoming a part of such motor vehicle sold to a motor
3 carrier who is subject to a fee prescribed in title 28, chapter 16, article
4 4 and who is engaged in the business of leasing or renting such property.

5 43. Livestock and poultry feed, salts, vitamins and other additives for
6 livestock or poultry consumption that are sold to persons who are engaged in
7 producing livestock, poultry, or livestock or poultry products or who are
8 engaged in feeding livestock or poultry commercially. For purposes of this
9 paragraph, "poultry" includes ratites.

10 44. Sales of implants used as growth promotants and injectable
11 medicines, not already exempt under paragraph 8 of this subsection, for
12 livestock or poultry owned by or in possession of persons who are engaged in
13 producing livestock, poultry, or livestock or poultry products or who are
14 engaged in feeding livestock or poultry commercially. For purposes of this
15 paragraph, "poultry" includes ratites.

16 45. Sales of motor vehicles at auction to nonresidents of this state
17 for use outside this state if the vehicles are shipped or delivered out of
18 this state, regardless of where title to the motor vehicles passes or its
19 free on board point.

20 46. Tangible personal property sold to a person engaged in business and
21 subject to tax under the transient lodging classification if the tangible
22 personal property is a personal hygiene item or articles used by human beings
23 for food, drink or condiment, except alcoholic beverages, which are furnished
24 without additional charge to and intended to be consumed by the transient
25 during the transient's occupancy.

26 47. Sales of alternative fuel, as defined in section 1-215, to a used
27 oil fuel burner who has received a permit to burn used oil or used oil fuel
28 under section 49-426 or 49-480.

29 48. Sales of materials that are purchased by or for publicly funded
30 libraries including school district libraries, charter school libraries,
31 community college libraries, state university libraries or federal, state,
32 county or municipal libraries for use by the public as follows:

33 (a) Printed or photographic materials, beginning August 7, 1985.

34 (b) Electronic or digital media materials, beginning July 17, 1994.

35 49. Tangible personal property sold to a commercial airline and
36 consisting of food, beverages and condiments and accessories used for serving
37 the food and beverages, if those items are to be provided without additional
38 charge to passengers for consumption in flight. For purposes of this
39 paragraph, "commercial airline" means a person holding a federal certificate
40 of public convenience and necessity or foreign air carrier permit for air
41 transportation to transport persons, property or United States mail in
42 intrastate, interstate or foreign commerce.

43 50. Sales of alternative fuel vehicles, ~~as defined in section 43-1086,~~
44 if the vehicle was manufactured as a diesel fuel vehicle and converted to
45 operate on alternative fuel and equipment that is installed in a conventional

1 diesel fuel motor vehicle to convert the vehicle to operate on an alternative
2 fuel, as defined in section 1-215.

3 51. Sales of any spirituous, vinous or malt liquor by a person that is
4 licensed in this state as a wholesaler by the department of liquor licenses
5 and control pursuant to title 4, chapter 2, article 1.

6 52. Sales of tangible personal property to be incorporated or installed
7 as part of environmental response or remediation activities under section
8 42-5075, subsection B, paragraph 6.

9 53. Sales of tangible personal property by a nonprofit organization
10 that is exempt from taxation under section 501(c)(6) of the internal revenue
11 code if the organization produces, organizes or promotes cultural or civic
12 related festivals or events and no part of the organization's net earnings
13 inures to the benefit of any private shareholder or individual.

14 B. In addition to the deductions from the tax base prescribed by
15 subsection A of this section, the gross proceeds of sales or gross income
16 derived from sales of the following categories of tangible personal property
17 shall be deducted from the tax base:

18 1. Machinery, or equipment, used directly in manufacturing,
19 processing, fabricating, job printing, refining or metallurgical operations.
20 The terms "manufacturing", "processing", "fabricating", "job printing",
21 "refining" and "metallurgical" as used in this paragraph refer to and include
22 those operations commonly understood within their ordinary meaning.
23 "Metallurgical operations" includes leaching, milling, precipitating,
24 smelting and refining.

25 2. Mining machinery, or equipment, used directly in the process of
26 extracting ores or minerals from the earth for commercial purposes, including
27 equipment required to prepare the materials for extraction and handling,
28 loading or transporting such extracted material to the surface. "Mining"
29 includes underground, surface and open pit operations for extracting ores and
30 minerals.

31 3. Tangible personal property sold to persons engaged in business
32 classified under the telecommunications classification and consisting of
33 central office switching equipment, switchboards, private branch exchange
34 equipment, microwave radio equipment and carrier equipment including optical
35 fiber, coaxial cable and other transmission media which are components of
36 carrier systems.

37 4. Machinery, equipment or transmission lines used directly in
38 producing or transmitting electrical power, but not including distribution.
39 Transformers and control equipment used at transmission substation sites
40 constitute equipment used in producing or transmitting electrical power.

41 5. Neat animals, horses, asses, sheep, ratites, swine or goats used
42 or to be used as breeding or production stock, including sales of breedings
43 or ownership shares in such animals used for breeding or production.

44 6. Pipes or valves four inches in diameter or larger used to transport
45 oil, natural gas, artificial gas, water or coal slurry, including compressor

1 units, regulators, machinery and equipment, fittings, seals and any other
2 part that is used in operating the pipes or valves.

3 7. Aircraft, navigational and communication instruments and other
4 accessories and related equipment sold to:

5 (a) A person holding a federal certificate of public convenience and
6 necessity, a supplemental air carrier certificate under federal aviation
7 regulations (14 Code of Federal Regulations part 121) or a foreign air
8 carrier permit for air transportation for use as or in conjunction with or
9 becoming a part of aircraft to be used to transport persons, property or
10 United States mail in intrastate, interstate or foreign commerce.

11 (b) Any foreign government for use by such government outside of this
12 state.

13 (c) Persons who are not residents of this state and who will not use
14 such property in this state other than in removing such property from this
15 state. This subdivision also applies to corporations that are not
16 incorporated in this state, regardless of maintaining a place of business in
17 this state, if the principal corporate office is located outside this state
18 and the property will not be used in this state other than in removing the
19 property from this state.

20 8. Machinery, tools, equipment and related supplies used or consumed
21 directly in repairing, remodeling or maintaining aircraft, aircraft engines
22 or aircraft component parts by or on behalf of a certificated or licensed
23 carrier of persons or property.

24 9. Railroad rolling stock, rails, ties and signal control equipment
25 used directly to transport persons or property.

26 10. Machinery or equipment used directly to drill for oil or gas or
27 used directly in the process of extracting oil or gas from the earth for
28 commercial purposes.

29 11. Buses or other urban mass transit vehicles which are used directly
30 to transport persons or property for hire or pursuant to a governmentally
31 adopted and controlled urban mass transportation program and which are sold
32 to bus companies holding a federal certificate of convenience and necessity
33 or operated by any city, town or other governmental entity or by any person
34 contracting with such governmental entity as part of a governmentally adopted
35 and controlled program to provide urban mass transportation.

36 12. Groundwater measuring devices required under section 45-604.

37 13. New machinery and equipment consisting of tractors, tractor-drawn
38 implements, self-powered implements, machinery and equipment necessary for
39 extracting milk, and machinery and equipment necessary for cooling milk and
40 livestock, and drip irrigation lines not already exempt under paragraph 6 of
41 this subsection and that are used for commercial production of agricultural,
42 horticultural, viticultural and floricultural crops and products in this
43 state. In this paragraph:

1 (a) "New machinery and equipment" means machinery and equipment which
2 have never been sold at retail except pursuant to leases or rentals which do
3 not total two years or more.

4 (b) "Self-powered implements" includes machinery and equipment that
5 are electric-powered.

6 14. Machinery or equipment used in research and development. In this
7 paragraph, "research and development" means basic and applied research in the
8 sciences and engineering, and designing, developing or testing prototypes,
9 processes or new products, including research and development of computer
10 software that is embedded in or an integral part of the prototype or new
11 product or that is required for machinery or equipment otherwise exempt under
12 this section to function effectively. Research and development do not
13 include manufacturing quality control, routine consumer product testing,
14 market research, sales promotion, sales service, research in social sciences
15 or psychology, computer software research that is not included in the
16 definition of research and development, or other nontechnological activities
17 or technical services.

18 15. Machinery and equipment that are purchased by or on behalf of the
19 owners of a soundstage complex and primarily used for motion picture,
20 multimedia or interactive video production in the complex. This paragraph
21 applies only if the initial construction of the soundstage complex begins
22 after June 30, 1996 and before January 1, 2002 and the machinery and
23 equipment are purchased before the expiration of five years after the start
24 of initial construction. For purposes of this paragraph:

25 (a) "Motion picture, multimedia or interactive video production"
26 includes products for theatrical and television release, educational
27 presentations, electronic retailing, documentaries, music videos, industrial
28 films, CD-ROM, video game production, commercial advertising and television
29 episode production and other genres that are introduced through developing
30 technology.

31 (b) "Soundstage complex" means a facility of multiple stages including
32 production offices, construction shops and related areas, prop and costume
33 shops, storage areas, parking for production vehicles and areas that are
34 leased to businesses that complement the production needs and orientation of
35 the overall facility.

36 16. Tangible personal property that is used by either of the following
37 to receive, store, convert, produce, generate, decode, encode, control or
38 transmit telecommunications information:

39 (a) Any direct broadcast satellite television or data transmission
40 service that operates pursuant to 47 Code of Federal Regulations parts 25 and
41 100.

42 (b) Any satellite television or data transmission facility, if both
43 of the following conditions are met:

44 (i) Over two-thirds of the transmissions, measured in megabytes,
45 transmitted by the facility during the test period were transmitted to or on

1 behalf of one or more direct broadcast satellite television or data
2 transmission services that operate pursuant to 47 Code of Federal Regulations
3 parts 25 and 100.

4 (ii) Over two-thirds of the transmissions, measured in megabytes,
5 transmitted by or on behalf of those direct broadcast television or data
6 transmission services during the test period were transmitted by the facility
7 to or on behalf of those services.

8 For purposes of subdivision (b) of this paragraph, "test period" means the
9 three hundred sixty-five day period beginning on the later of the date on
10 which the tangible personal property is purchased or the date on which the
11 direct broadcast satellite television or data transmission service first
12 transmits information to its customers.

13 17. Clean rooms that are used for manufacturing, processing,
14 fabrication or research and development, as defined in paragraph 14 of this
15 subsection, of semiconductor products. For purposes of this paragraph,
16 "clean room" means all property that comprises or creates an environment
17 where humidity, temperature, particulate matter and contamination are
18 precisely controlled within specified parameters, without regard to whether
19 the property is actually contained within that environment or whether any of
20 the property is affixed to or incorporated into real property. Clean room:

21 (a) Includes the integrated systems, fixtures, piping, movable
22 partitions, lighting and all property that is necessary or adapted to reduce
23 contamination or to control airflow, temperature, humidity, chemical purity
24 or other environmental conditions or manufacturing tolerances, as well as the
25 production machinery and equipment operating in conjunction with the clean
26 room environment.

27 (b) Does not include the building or other permanent, nonremovable
28 component of the building that houses the clean room environment.

29 18. Machinery and equipment used directly in the feeding of poultry,
30 the environmental control of housing for poultry, the movement of eggs within
31 a production and packaging facility or the sorting or cooling of eggs. This
32 exemption does not apply to vehicles used for transporting eggs.

33 19. Machinery or equipment, including related structural components,
34 that is employed in connection with manufacturing, processing, fabricating,
35 job printing, refining, mining, natural gas pipelines, metallurgical
36 operations, telecommunications, producing or transmitting electricity or
37 research and development and that is used directly to meet or exceed rules
38 or regulations adopted by the federal energy regulatory commission, the
39 United States environmental protection agency, the United States nuclear
40 regulatory commission, the Arizona department of environmental quality or a
41 political subdivision of this state to prevent, monitor, control or reduce
42 land, water or air pollution.

43 20. Machinery and equipment that are sold to a person engaged in the
44 commercial production of livestock, livestock products or agricultural,
45 horticultural, viticultural or floricultural crops or products in this state

1 and that are used directly and primarily to prevent, monitor, control or
2 reduce air, water or land pollution.

3 21. Machinery or equipment that enables a television station to
4 originate and broadcast or to receive and broadcast digital television
5 signals and that was purchased to facilitate compliance with the
6 telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States
7 Code section 336) and the federal communications commission order issued
8 April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does
9 not exempt any of the following:

10 (a) Repair or replacement parts purchased for the machinery or
11 equipment described in this paragraph.

12 (b) Machinery or equipment purchased to replace machinery or equipment
13 for which an exemption was previously claimed and taken under this paragraph.

14 (c) Any machinery or equipment purchased after the television station
15 has ceased analog broadcasting, or purchased after November 1, 2009,
16 whichever occurs first.

17 C. The deductions provided by subsection B of this section do not
18 include sales of:

19 1. Expendable materials. For purposes of this paragraph, expendable
20 materials do not include any of the categories of tangible personal property
21 specified in subsection B of this section regardless of the cost or useful
22 life of that property.

23 2. Janitorial equipment and hand tools.

24 3. Office equipment, furniture and supplies.

25 4. Tangible personal property used in selling or distributing
26 activities, other than the telecommunications transmissions described in
27 subsection B, paragraph 16 of this section.

28 5. Motor vehicles required to be licensed by this state, except buses
29 or other urban mass transit vehicles specifically exempted pursuant to
30 subsection B, paragraph 11 of this section, without regard to the use of such
31 motor vehicles.

32 6. Shops, buildings, docks, depots and all other materials of whatever
33 kind or character not specifically included as exempt.

34 7. Motors and pumps used in drip irrigation systems.

35 D. In addition to the deductions from the tax base prescribed by
36 subsection A of this section, there shall be deducted from the tax base the
37 gross proceeds of sales or gross income derived from sales of machinery,
38 equipment, materials and other tangible personal property used directly and
39 predominantly to construct a qualified environmental technology
40 manufacturing, producing or processing facility as described in section
41 41-1514.02. This subsection applies for ten full consecutive calendar or
42 fiscal years after the start of initial construction.

43 E. In computing the tax base, gross proceeds of sales or gross income
44 from retail sales of heavy trucks and trailers does not include any amount

1 attributable to federal excise taxes imposed by 26 United States Code section
2 4051.

3 F. In computing the tax base, gross proceeds of sales or gross income
4 from the sale of use fuel, as defined in section 28-5601, does not include
5 any amount attributable to federal excise taxes imposed by 26 United States
6 Code section 4091.

7 G. If a person is engaged in an occupation or business to which
8 subsection A of this section applies, the person's books shall be kept so as
9 to show separately the gross proceeds of sales of tangible personal property
10 and the gross income from sales of services, and if not so kept the tax shall
11 be imposed on the total of the person's gross proceeds of sales of tangible
12 personal property and gross income from services.

13 H. If a person is engaged in the business of selling tangible personal
14 property at both wholesale and retail, the tax under this section applies
15 only to the gross proceeds of the sales made other than at wholesale if the
16 person's books are kept so as to show separately the gross proceeds of sales
17 of each class, and if the books are not so kept, the tax under this section
18 applies to the gross proceeds of every sale so made.

19 I. A person who engages in manufacturing, baling, crating, boxing,
20 barreling, canning, bottling, sacking, preserving, processing or otherwise
21 preparing for sale or commercial use any livestock, agricultural or
22 horticultural product or any other product, article, substance or commodity
23 and who sells the product of such business at retail in this state is deemed,
24 as to such sales, to be engaged in business classified under the retail
25 classification. This subsection does not apply to businesses classified
26 under the:

- 27 1. Transporting classification.
- 28 2. Utilities classification.
- 29 3. Telecommunications classification.
- 30 4. Pipeline classification.
- 31 5. Private car line classification.
- 32 6. Publication classification.
- 33 7. Job printing classification.
- 34 8. Prime contracting classification.
- 35 9. Owner builder sales classification.
- 36 10. Restaurant classification.

37 J. The gross proceeds of sales or gross income derived from the
38 following shall be deducted from the tax base for the retail classification:

- 39 1. Sales made directly to the United States government or its
40 departments or agencies by a manufacturer, modifier, assembler or repairer.
- 41 2. Sales made directly to a manufacturer, modifier, assembler or
42 repairer if such sales are of any ingredient or component part of products
43 sold directly to the United States government or its departments or agencies
44 by the manufacturer, modifier, assembler or repairer.

1 3. Overhead materials or other tangible personal property that is used
2 in performing a contract between the United States government and a
3 manufacturer, modifier, assembler or repairer, including property used in
4 performing a subcontract with a government contractor who is a manufacturer,
5 modifier, assembler or repairer, to which title passes to the government
6 under the terms of the contract or subcontract.

7 4. Sales of overhead materials or other tangible personal property to
8 a manufacturer, modifier, assembler or repairer if the gross proceeds of
9 sales or gross income derived from the property by the manufacturer,
10 modifier, assembler or repairer will be exempt under paragraph 3 of this
11 subsection.

12 K. There shall be deducted from the tax base fifty per cent of the
13 gross proceeds or gross income from any sale of tangible personal property
14 made directly to the United States government or its departments or agencies,
15 which is not deducted under subsection J of this section.

16 L. The department shall require every person claiming a deduction
17 provided by subsection J or K of this section to file on forms prescribed by
18 the department at such times as the department directs a sworn statement
19 disclosing the name of the purchaser and the exact amount of sales on which
20 the exclusion or deduction is claimed.

21 M. In computing the tax base, gross proceeds of sales or gross income
22 does not include:

23 1. A manufacturer's cash rebate on the sales price of a motor vehicle
24 if the buyer assigns the buyer's right in the rebate to the retailer.

25 2. The waste tire disposal fee imposed pursuant to section 44-1302.

26 N. There shall be deducted from the tax base the amount received from
27 sales of solar energy devices, but the deduction shall not exceed five
28 thousand dollars for each solar energy device. Before deducting any amount
29 under this subsection, the retailer shall register with the department as a
30 solar energy retailer. By registering, the retailer acknowledges that it
31 will make its books and records relating to sales of solar energy devices
32 available to the department for examination.

33 O. In computing the tax base in the case of the sale or transfer of
34 wireless telecommunications equipment as an inducement to a customer to enter
35 into or continue a contract for telecommunications services that are taxable
36 under section 42-5064, gross proceeds of sales or gross income does not
37 include any sales commissions or other compensation received by the retailer
38 as a result of the customer entering into or continuing a contract for the
39 telecommunications services.

40 P. For the purposes of this section, a sale of wireless
41 telecommunications equipment to a person who holds the equipment for sale or
42 transfer to a customer as an inducement to enter into or continue a contract
43 for telecommunications services that are taxable under section 42-5064 is
44 considered to be a sale for resale in the regular course of business.

1 Q. Retail sales of prepaid calling cards or prepaid authorization
2 numbers for telecommunications services, including sales of reauthorization
3 of a prepaid card or authorization number, are subject to tax under this
4 section.

5 R. For the purposes of this section, the diversion of gas from a
6 pipeline by a person engaged in the business of operating a natural or
7 artificial gas pipeline, for the sole purpose of fueling compressor equipment
8 to pressurize the pipeline, is not a sale of the gas to the operator of the
9 pipeline.

10 S. If a seller is entitled to a deduction pursuant to subsection B,
11 paragraph 16, subdivision (b) of this section, the department may require the
12 purchaser to establish that the requirements of subsection B, paragraph 16,
13 subdivision (b) of this section have been satisfied. If the purchaser cannot
14 establish that the requirements of subsection B, paragraph 16, subdivision
15 (b) of this section have been satisfied, the purchaser is liable in an amount
16 equal to any tax, penalty and interest which the seller would have been
17 required to pay under article 1 of this chapter if the seller had not made
18 a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this
19 section. Payment of the amount under this subsection exempts the purchaser
20 from liability for any tax imposed under article 4 of this chapter and
21 related to the tangible personal property purchased. The amount shall be
22 treated as transaction privilege tax to the purchaser and as tax revenues
23 collected from the seller to designate the distribution base pursuant to
24 section 42-5029.

25 T. For purposes of section 42-5032.01, the department shall separately
26 account for revenues collected under the retail classification from
27 businesses selling tangible personal property at retail:

28 1. On the premises of a multipurpose facility that is owned, leased
29 or operated by the tourism and sports authority pursuant to title 5,
30 chapter 8.

31 2. At professional football contests that are held in a stadium
32 located on the campus of an institution under the jurisdiction of the Arizona
33 board of regents.

34 U. For the purposes of this section:

35 1. "Aircraft" includes:

36 (a) An airplane flight simulator that is approved by the federal
37 aviation administration for use as a phase II or higher flight simulator
38 under appendix H, 14 Code of Federal Regulations part 121.

39 (b) Tangible personal property that is permanently affixed or attached
40 as a component part of an aircraft that is owned or operated by a
41 certificated or licensed carrier of persons or property.

42 2. "Other accessories and related equipment" includes aircraft
43 accessories and equipment such as ground service equipment that physically
44 contact aircraft at some point during the overall carrier operation.

1 3. "Selling at retail" means a sale for any purpose other than for
2 resale in the regular course of business in the form of tangible personal
3 property, but transfer of possession, lease and rental as used in the
4 definition of sale mean only such transactions as are found on investigation
5 to be in lieu of sales as defined without the words lease or rental.

6 V. For purposes of subsection J of this section:

7 1. "Assembler" means a person who unites or combines products, wares
8 or articles of manufacture so as to produce a change in form or substance
9 without changing or altering the component parts.

10 2. "Manufacturer" means a person who is principally engaged in the
11 fabrication, production or manufacture of products, wares or articles for use
12 from raw or prepared materials, imparting to those materials new forms,
13 qualities, properties and combinations.

14 3. "Modifier" means a person who reworks, changes or adds to products,
15 wares or articles of manufacture.

16 4. "Overhead materials" means tangible personal property, the gross
17 proceeds of sales or gross income derived from which would otherwise be
18 included in the retail classification, and which are used or consumed in the
19 performance of a contract, the cost of which is charged to an overhead
20 expense account and allocated to various contracts based upon generally
21 accepted accounting principles and consistent with government contract
22 accounting standards.

23 5. "Repairer" means a person who restores or renews products, wares
24 or articles of manufacture.

25 6. "Subcontract" means an agreement between a contractor and any
26 person who is not an employee of the contractor for furnishing of supplies
27 or services that, in whole or in part, are necessary to the performance of
28 one or more government contracts, or under which any portion of the
29 contractor's obligation under one or more government contracts is performed,
30 undertaken or assumed and that includes provisions causing title to overhead
31 materials or other tangible personal property used in the performance of the
32 subcontract to pass to the government or that includes provisions
33 incorporating such title passing clauses in a government contract into the
34 subcontract.

35 Sec. 3. Section 42-5075, Arizona Revised Statutes, is amended to read:

36 42-5075. Prime contracting classification; exemptions;
37 definitions

38 A. The prime contracting classification is comprised of the business
39 of prime contracting and dealership of manufactured buildings. The sale of
40 a used manufactured building is not taxable under this chapter.

41 B. The tax base for the prime contracting classification is sixty-five
42 per cent of the gross proceeds of sales or gross income derived from the
43 business. The following amounts shall be deducted from the gross proceeds
44 of sales or gross income before computing the tax base:

1 1. The sales price of land, which shall not exceed the fair market
2 value.

3 2. Sales and installation of groundwater measuring devices required
4 under section 45-604 and groundwater monitoring wells required by law,
5 including monitoring wells installed for acquiring information for a permit
6 required by law.

7 3. The sales price of furniture, furnishings, fixtures, appliances,
8 and attachments that are not incorporated as component parts of or attached
9 to a manufactured building or the setup site. The sale of such items may be
10 subject to the taxes imposed by article 1 of this chapter separately and
11 distinctly from the sale of the manufactured building.

12 4. The gross proceeds of sales or gross income received from a
13 contract entered into for the construction, alteration, repair, addition,
14 subtraction, improvement, movement, wrecking or demolition of any building,
15 highway, road, railroad, excavation, manufactured building or other
16 structure, project, development or improvement located in a military reuse
17 zone for providing aviation or aerospace services or for a manufacturer,
18 assembler or fabricator of aviation or aerospace products within five years
19 after the zone is initially established or renewed under section 41-1531. To
20 qualify for this deduction, before beginning work under the contract the
21 prime contractor must obtain a letter of qualification from the department
22 of revenue.

23 5. The gross proceeds of sales or gross income derived from a contract
24 to construct a qualified environmental technology manufacturing, producing
25 or processing facility, as described in section 41-1514.02, and from
26 subsequent construction and installation contracts that begin within ten
27 years after the start of initial construction. To qualify for this
28 deduction, before beginning work under the contract the prime contractor must
29 obtain a letter of qualification from the department of revenue. This
30 paragraph shall apply for ten full consecutive calendar or fiscal years after
31 the start of initial construction.

32 6. The gross proceeds of sales or gross income from a contract to
33 provide for one or more of the following actions, or a contract for site
34 preparation, constructing, furnishing or installing machinery, equipment or
35 other tangible personal property, including structures necessary to protect
36 exempt incorporated materials or installed machinery or equipment, and
37 tangible personal property incorporated into the project, to perform one or
38 more of the following actions in response to a release or suspected release
39 of a hazardous substance, pollutant or contaminant from a facility to the
40 environment, unless the release was authorized by a permit issued by a
41 governmental authority:

42 (a) Actions to monitor, assess and evaluate such a release or a
43 suspected release.

44 (b) Excavation, removal and transportation of contaminated soil and
45 its treatment or disposal.

1 (c) Treatment of contaminated soil by vapor extraction, chemical or
2 physical stabilization, soil washing or biological treatment to reduce the
3 concentration, toxicity or mobility of a contaminant.

4 (d) Pumping and treatment or in situ treatment of contaminated
5 groundwater or surface water to reduce the concentration or toxicity of a
6 contaminant.

7 (e) The installation of structures, such as cutoff walls or caps, to
8 contain contaminants present in groundwater or soil and prevent them from
9 reaching a location where they could threaten human health or welfare or the
10 environment.

11 This paragraph does not include asbestos removal or the construction or use
12 of ancillary structures such as maintenance sheds, offices or storage
13 facilities for unattached equipment, pollution control equipment, facilities
14 or other control items required or to be used by a person to prevent or
15 control contamination before it reaches the environment.

16 7. The gross proceeds of sales or gross income that is derived from
17 a contract entered into for the installation, assembly, repair or maintenance
18 of machinery, equipment or other tangible personal property that is deducted
19 from the tax base of the retail classification pursuant to section 42-5061,
20 subsection B, or that is exempt from use tax pursuant to section 42-5159,
21 subsection B, and that does not become a permanent attachment to a building,
22 highway, road, railroad, excavation or manufactured building or other
23 structure, project, development or improvement. If the ownership of the
24 realty is separate from the ownership of the machinery, equipment or tangible
25 personal property, the determination as to permanent attachment shall be made
26 as if the ownership were the same. The deduction provided in this paragraph
27 does not include gross proceeds of sales or gross income from that portion
28 of any contracting activity which consists of the development of, or
29 modification to, real property in order to facilitate the installation,
30 assembly, repair, maintenance or removal of machinery, equipment or other
31 tangible personal property that is deducted from the tax base of the retail
32 classification pursuant to section 42-5061, subsection B or that is exempt
33 from use tax pursuant to section 42-5159, subsection B. For purposes of this
34 paragraph, "permanent attachment" means at least one of the following:

35 (a) To be incorporated into real property.

36 (b) To become so affixed to real property that it becomes a part of
37 the real property.

38 (c) To be so attached to real property that removal would cause
39 substantial damage to the real property from which it is removed.

40 8. The gross proceeds of sales or gross income received from a
41 contract for constructing any lake facility development in a commercial
42 enhancement reuse district that is designated pursuant to section 9-499.08
43 if the prime contractor maintains the following records in a form
44 satisfactory to the department and to the city or town in which the property
45 is located:

1 (a) The certificate of qualification of the lake facility development
2 issued by the city or town pursuant to section 9-499.08, subsection D.

3 (b) All state and local transaction privilege tax returns for the
4 period of time during which the prime contractor received gross proceeds of
5 sales or gross income from a contract to construct a lake facility
6 development in a designated commercial enhancement reuse district, showing
7 the amount exempted from state and local taxation.

8 (c) Any other information that the department considers to be
9 necessary.

10 9. The gross proceeds of sales or gross income attributable to the
11 purchase of machinery, equipment or other tangible personal property that is
12 exempt from or deductible from transaction privilege and use tax under:

13 (a) Section 42-5061, subsection A, paragraph 25 or 29.

14 (b) Section 42-5061, subsection B.

15 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
16 (c), (d), (e), (f), (i), or (j) OR (l).

17 (d) Section 42-5159, subsection B.

18 10. The gross proceeds of sales or gross income received from a
19 contract for the construction of an environmentally controlled facility for
20 the raising of poultry for the production of eggs and the sorting, cooling
21 and packaging of eggs.

22 11. The gross proceeds of sales or gross income that is derived from
23 a contract entered into with a person who is engaged in the commercial
24 production of livestock, livestock products or agricultural, horticultural,
25 viticultural or floricultural crops or products in this state for the
26 construction, alteration, repair, improvement, movement, wrecking or
27 demolition or addition to or subtraction from any building, highway, road,
28 excavation, manufactured building or other structure, project, development
29 or improvement used directly and primarily to prevent, monitor, control or
30 reduce air, water or land pollution.

31 12. The gross proceeds of sales or gross income that is derived from
32 the installation, assembly, repair or maintenance of clean rooms that are
33 deducted from the tax base of the retail classification pursuant to section
34 42-5061, subsection B, paragraph 17.

35 13. For taxable periods beginning from and after June 30, 2001, the
36 gross proceeds of sales or gross income derived from a contract entered into
37 for the construction of a residential apartment housing facility that
38 qualifies for a federal housing subsidy for low income persons over sixty-two
39 years of age and that is owned by a nonprofit charitable organization that
40 has qualified under section 501(c)(3) of the internal revenue code.

41 14. For taxable periods beginning from and after December 31, 1996 and
42 ending before January 1, 2011, the gross proceeds of sales or gross income
43 derived from a contract to provide and install a solar energy device. The
44 deduction shall not exceed five thousand dollars for each contract. Before
45 deducting any amount under this paragraph, the contractor shall register with

1 the department as a solar energy contractor. By registering, the contractor
2 acknowledges that it will make its books and records relating to sales of
3 solar energy devices available to the department for examination.

4 15. The gross proceeds of sales or gross income derived from a contract
5 entered into for the construction of a launch site, as defined in 14 Code of
6 Federal Regulations section 401.5.

7 16. The gross proceeds of sales or gross income derived from a contract
8 entered into for the construction of a domestic violence shelter that is
9 owned and operated by a nonprofit charitable organization that has qualified
10 under section 501(c)(3) of the internal revenue code.

11 17. The gross proceeds of sales or gross income derived from contracts
12 to perform postconstruction treatment of real property for termite and
13 general pest control, including wood destroying organisms.

14 18. The gross proceeds of sales or gross income received from contracts
15 entered into before July 1, 2006 for constructing a state university research
16 infrastructure project if the project has been reviewed by the joint
17 committee on capital review before the university enters into the
18 construction contract for the project. For the purposes of this paragraph,
19 "research infrastructure" has the same meaning prescribed in section 15-1670.

20 C. Entitlement to the deduction pursuant to subsection B, paragraph
21 7 of this section is subject to the following provisions:

22 1. A prime contractor may establish entitlement to the deduction by
23 both:

24 (a) Marking the invoice for the transaction to indicate that the gross
25 proceeds of sales or gross income derived from the transaction was deducted
26 from the base.

27 (b) Obtaining a certificate executed by the purchaser indicating the
28 name and address of the purchaser, the precise nature of the business of the
29 purchaser, the purpose for which the purchase was made, the necessary facts
30 to establish the deductibility of the property under section 42-5061,
31 subsection B, and a certification that the person executing the certificate
32 is authorized to do so on behalf of the purchaser. The certificate may be
33 disregarded if the prime contractor has reason to believe that the
34 information contained in the certificate is not accurate or complete.

35 2. A person who does not comply with paragraph 1 of this subsection
36 may establish entitlement to the deduction by presenting facts necessary to
37 support the entitlement, but the burden of proof is on that person.

38 3. The department may prescribe a form for the certificate described
39 in paragraph 1, subdivision (b) of this subsection. The department may also
40 adopt rules that describe the transactions with respect to which a person is
41 not entitled to rely solely on the information contained in the certificate
42 provided in paragraph 1, subdivision (b) of this subsection but must instead
43 obtain such additional information as required in order to be entitled to the
44 deduction.

1 4. If a prime contractor is entitled to a deduction by complying with
2 paragraph 1 of this subsection, the department may require the purchaser who
3 caused the execution of the certificate to establish the accuracy and
4 completeness of the information required to be contained in the certificate
5 which would entitle the prime contractor to the deduction. If the purchaser
6 cannot establish the accuracy and completeness of the information, the
7 purchaser is liable in an amount equal to any tax, penalty and interest which
8 the prime contractor would have been required to pay under article 1 of this
9 chapter if the prime contractor had not complied with paragraph 1 of this
10 subsection. Payment of the amount under this paragraph exempts the purchaser
11 from liability for any tax imposed under article 4 of this chapter. The
12 amount shall be treated as a transaction privilege tax to the purchaser and
13 as tax revenues collected from the prime contractor in order to designate the
14 distribution base for purposes of section 42-5029.

15 D. Subcontractors or others who perform services in respect to any
16 improvement, building, highway, road, railroad, excavation, manufactured
17 building or other structure, project, development or improvement are not
18 subject to tax if they can demonstrate that the job was within the control
19 of a prime contractor or contractors or a dealership of manufactured
20 buildings and that the prime contractor or dealership is liable for the tax
21 on the gross income, gross proceeds of sales or gross receipts attributable
22 to the job and from which the subcontractors or others were paid.

23 E. Amounts received by a contractor for a project are excluded from
24 the contractor's gross proceeds of sales or gross income derived from the
25 business if the person who hired the contractor executes and provides a
26 certificate to the contractor stating that the person providing the
27 certificate is a prime contractor and is liable for the tax under article 1
28 of this chapter. The department shall prescribe the form of the certificate.
29 If the contractor has reason to believe that the information contained on the
30 certificate is erroneous or incomplete, the department may disregard the
31 certificate. If the person who provides the certificate is not liable for
32 the tax as a prime contractor, that person is nevertheless deemed to be the
33 prime contractor in lieu of the contractor and is subject to the tax under
34 this section on the gross receipts or gross proceeds received by the
35 contractor.

36 F. Every person engaging or continuing in this state in the business
37 of prime contracting or dealership of manufactured buildings shall present
38 to the purchaser of such prime contracting or manufactured building a written
39 receipt of the gross income or gross proceeds of sales from such activity and
40 shall separately state the taxes to be paid pursuant to this section.

41 G. For purposes of section 42-5032.01, the department shall separately
42 account for revenues collected under the prime contracting classification
43 from any prime contractor engaged in the preparation or construction of a
44 multipurpose facility, and related infrastructure, that is owned, operated
45 or leased by the tourism and sports authority pursuant to title 5, chapter 8.

1 H. The gross proceeds of sales or gross income derived from a contract
2 for lawn maintenance services are not subject to tax under this section if
3 the contract does not include landscaping activities. Lawn maintenance
4 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
5 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
6 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
7 lawn de-thatching, seeding winter lawns, leaf and debris collection and
8 removal, tree or shrub pruning or clipping, garden and gravel raking and
9 applying pesticides, as defined in section 3-361, and fertilizer materials,
10 as defined in section 3-262.

11 I. The gross proceeds of sales or gross income derived from
12 landscaping activities are subject to tax under this section. Landscaping
13 includes installing lawns, grading or leveling ground, installing gravel or
14 boulders, planting trees and other plants, felling trees, removing or
15 mulching tree stumps, removing other imbedded plants, building or modifying
16 irrigation berms, repairing sprinkler or watering systems, installing
17 railroad ties and installing underground sprinkler or watering systems.

18 J. For THE purposes of this section:

19 1. "Contracting" means engaging in business as a contractor.

20 2. "Contractor" is synonymous with the term "builder" and means any
21 person, firm, partnership, corporation, association or other organization,
22 or a combination of any of them, that undertakes to or offers to undertake
23 to, or purports to have the capacity to undertake to, or submits a bid to,
24 or does personally or by or through others, construct, alter, repair, add to,
25 subtract from, improve, move, wreck or demolish any building, highway, road,
26 railroad, excavation, manufactured building or other structure, project,
27 development or improvement, or to do any part of such a project, including
28 the erection of scaffolding or other structure or works in connection with
29 such a project, and includes subcontractors and specialty contractors. For
30 all purposes of taxation or deduction, this definition shall govern without
31 regard to whether or not such contractor is acting in fulfillment of a
32 contract.

33 3. "Dealership of manufactured buildings" means a dealer who either:

34 (a) Is licensed pursuant to title 41, chapter 16 and who sells at
35 retail manufactured buildings.

36 (b) Supervises, performs or coordinates the excavation and completion
37 of site improvements, setup or moving of a manufactured building including
38 the contracting, if any, with any subcontractor or specialty contractor for
39 the completion of the contract.

40 4. "Manufactured building" means a manufactured home, mobile home or
41 factory-built building, as defined in section 41-2142.

42 5. "Prime contracting" means engaging in business as a prime
43 contractor.

1 6. "Prime contractor" means a contractor who supervises, performs or
2 coordinates the construction, alteration, repair, addition, subtraction,
3 improvement, movement, wreckage or demolition of any building, highway, road,
4 railroad, excavation, manufactured building or other structure, project,
5 development or improvement including the contracting, if any, with any
6 subcontractors or specialty contractors and who is responsible for the
7 completion of the contract.

8 7. "Sale of a used manufactured building" does not include a lease of
9 a used manufactured building.

10 Sec. 4. Section 42-14203, Arizona Revised Statutes, is amended to
11 read:

12 42-14203. Determining and reporting valuation

13 A. On or before August 31 of each year, the department shall find the
14 ~~location~~ and full cash value of the property of each pipeline that operates
15 in this state.

16 B. The valuation required by this section is the value determined as
17 of January 1 of the valuation year.

18 C. On or before November 30 OF EACH YEAR, the department shall
19 transmit the locations, descriptions and valuations to the respective county
20 assessors.

21 Sec. 5. Section 42-14255, Arizona Revised Statutes, is amended to
22 read:

23 42-14255. Assessment, levy and collection of tax; limitation on
24 small airline company tax

25 A. The department shall annually:

26 1. Enter in its records the full cash value as determined under this
27 article of the flight property of the airline companies in this state.

28 2. Assess the property as provided by sections 42-12005 and 42-15005.

29 3. Levy a tax against the values so determined and assessed at a rate
30 that equals the sum of the average rates for primary and secondary property
31 taxes in the taxing jurisdictions in this state for the current year.

32 4. Collect the taxes according to the schedules prescribed by section
33 42-18052.

34 5. Deposit, pursuant to sections 35-146 and 35-147, the tax revenues
35 in the state aviation fund.

36 B. The tax imposed by this section is in lieu of all other ad valorem
37 taxes on the flight property of airline companies in this state.

38 C. Delinquent taxes bear interest at the rate determined pursuant to
39 section 42-1123.

40 D. THE FULL CASH VALUES THAT ARE USED FOR TAX PURPOSES PURSUANT TO
41 SUBSECTION A OF THIS SECTION ARE A MATTER OF PUBLIC RECORD AND ARE NOT
42 CONFIDENTIAL INFORMATION UNDER CHAPTER 2, ARTICLE 1 OF THIS TITLE.

1 Sec. 6. Section 42-14308, Arizona Revised Statutes, is amended to
2 read:

3 42-14308. Assessment, levy and collection of tax

4 A. The department shall annually:

5 1. Enter in its records the full cash value of each private car
6 company in this state as determined under this article.

7 2. Assess the property as provided by sections 42-12005 and 42-15005.

8 3. Levy a tax against the values so determined and assessed at a rate
9 that equals the sum of the average rates for primary and secondary property
10 taxes in the taxing jurisdictions in this state for the current year.

11 4. Collect the taxes that are:

12 (a) Due and payable on the following October 1.

13 (b) Delinquent after the following November 1.

14 5. Deposit, pursuant to sections 35-146 and 35-147, the tax revenues
15 in the state general fund.

16 B. The tax imposed by this section is in lieu of all other taxes on
17 the property and business of private car companies in this state except for
18 the annual license tax and registration fee.

19 C. Delinquent taxes bear interest at the rate determined pursuant to
20 section 42-1123 for each subsequent month in which the tax remains unpaid.

21 D. THE FULL CASH VALUES THAT ARE USED FOR TAX PURPOSES PURSUANT TO
22 SUBSECTION A OF THIS SECTION ARE A MATTER OF PUBLIC RECORD AND ARE NOT
23 CONFIDENTIAL INFORMATION UNDER CHAPTER 2, ARTICLE 1 OF THIS TITLE.

24 Sec. 7. Section 42-14404, Arizona Revised Statutes, is amended to
25 read:

26 42-14404. Apportionment of valuation

27 A. On or before November 30 of each year, the department shall:

28 1. Apportion the valuation among the several counties, cities, towns
29 and special taxing districts through which the company's lines run.

30 2. ~~Transmit a statement to the officers of the counties, cities, towns~~
31 ~~and districts who are in charge of valuations to be entered on the rolls as~~
32 ~~the taxable values of the company~~ OF THE COMPANY'S LOCATIONS, DESCRIPTIONS
33 AND VALUATIONS TO THE RESPECTIVE COUNTY ASSESSORS.

34 B. The counties, municipalities and districts shall tax the company
35 as railroad companies are taxed under article 8 of this chapter.

36 Sec. 8. Section 43-301, Arizona Revised Statutes, is amended to read:

37 43-301. Individual returns; definition

38 A. An individual whose income is taxable under this title shall file
39 a return with the department if he has, for the taxable year, THE INDIVIDUAL
40 HAS ANY OF THE FOLLOWING:

41 1. An Arizona adjusted gross income of five thousand five hundred
42 dollars or over, if single or married filing a separate return.

43 2. An Arizona adjusted gross income of eleven thousand dollars or
44 over, if married filing a joint return pursuant to section 43-309.

1 3. A gross income of fifteen thousand dollars or over, regardless of
2 the amount of taxable income.

3 B. In the case of a husband and wife, the spouse who controls the
4 disposition of or who receives or spends community income as well as the
5 spouse who is taxable on such income is liable for the payment of taxes
6 imposed by this title on such income. If a joint return is filed, the
7 liability for the tax on the aggregate income is joint and several.

8 C. This section applies regardless of whether an individual is
9 required to file a return under the internal revenue code or whether the
10 individual has any federal adjusted gross income for the taxable year.

11 D. For THE purposes of this section, "gross income" means gross income
12 as defined in the internal revenue code minus income included in gross income
13 but excluded from taxation under this title.

14 Sec. 9. Section 43-1021, Arizona Revised Statutes, is amended to read:

15 43-1021. Additions to Arizona gross income

16 In computing Arizona adjusted gross income, the following amounts shall
17 be added to Arizona gross income:

18 1. A beneficiary's share of the fiduciary adjustment to the extent
19 that the amount determined by section 43-1333 increases the beneficiary's
20 Arizona gross income.

21 2. An amount equal to the "ordinary income portion" of a lump sum
22 distribution that was excluded from federal adjusted gross income pursuant
23 to section 402(d) of the internal revenue code.

24 3. The amount of interest income received on obligations of any state,
25 territory or possession of the United States, or any political subdivision
26 thereof, located outside the state of Arizona, reduced, for tax years
27 beginning from and after December 31, 1996, by the amount of any interest on
28 indebtedness and other related expenses that were incurred or continued to
29 purchase or carry those obligations and that are not otherwise deducted or
30 subtracted in arriving at Arizona gross income.

31 4. Annuity income received during the taxable year to the extent that
32 the sum of the proceeds received from such annuity in all taxable years prior
33 to and including the current taxable year exceeds the total consideration and
34 premiums paid by the taxpayer. This paragraph applies only to those
35 annuities with respect to which the first payment was received prior to
36 December 31, 1978.

37 5. The excess of a partner's share of partnership taxable income
38 required to be included under chapter 14, article 2 of this title over the
39 income required to be reported under section 702(a)(8) of the internal
40 revenue code.

41 6. The excess of a partner's share of partnership losses determined
42 pursuant to section 702(a)(8) of the internal revenue code over the losses
43 allowable under chapter 14, article 2 of this title.

44 7. The amount by which the adjusted basis of property described in
45 this paragraph and computed pursuant to the internal revenue code exceeds the

1 adjusted basis of such property computed pursuant to this title and the
2 income tax act of 1954, as amended. This paragraph shall apply to all
3 property which is held for the production of income and which is sold or
4 otherwise disposed of during the taxable year, except depreciable property
5 used in a trade or business.

6 8. The amount of depreciation or amortization of costs of any capital
7 investment that is deducted pursuant to section 167 or 179 of the internal
8 revenue code by a qualified defense contractor with respect to which an
9 election is made to amortize pursuant to section 43-1024.

10 9. The amount of gain from the sale or other disposition of a capital
11 investment which a qualified defense contractor has elected to amortize
12 pursuant to section 43-1024.

13 ~~10. The amount of depreciation or amortization of costs of child care~~
14 ~~facilities deducted pursuant to section 167 or 188 of the internal revenue~~
15 ~~code for which a credit is taken under section 43-1075, subsection A,~~
16 ~~paragraph 1.~~

17 ~~11.~~ 10. Amounts withdrawn from the Arizona state retirement system,
18 the corrections officer retirement plan, the public safety personnel
19 retirement system, the elected officials' retirement plan or a county or city
20 retirement plan by an employee upon termination of employment before
21 retirement to the extent they were deducted in arriving at Arizona taxable
22 income in any year.

23 ~~12.~~ 11. That portion of the net operating loss included in federal
24 adjusted gross income which has already been taken as a net operating loss
25 for Arizona purposes or which is separately taken as a subtraction under the
26 special net operating loss transition rule.

27 ~~13.~~ 12. Any nonitemized amount deducted pursuant to section 170 of the
28 internal revenue code representing contributions to an educational
29 institution which denies admission, enrollment or board and room
30 accommodations on the basis of race, color or ethnic background except those
31 institutions primarily established for the education of American Indians.

32 ~~14.~~ 13. The amount paid as taxes on property in this state with
33 respect to which a credit is claimed under section 43-1078.

34 ~~15.~~ 14. Amounts withdrawn from a medical savings account by the
35 individual during the taxable year computed pursuant to section 220(f) of the
36 internal revenue code and not included in federal adjusted gross income.

37 ~~16.~~ 15. Any amount of agricultural water conservation expenses that
38 were deducted pursuant to the internal revenue code for which a credit is
39 claimed under section 43-1084.

40 ~~17.~~ 16. The amount by which the depreciation or amortization computed
41 under the internal revenue code with respect to property for which a credit
42 was taken under section 43-1080 exceeds the amount of depreciation or
43 amortization computed pursuant to the internal revenue code on the Arizona
44 adjusted basis of the property.

~~18.~~ 17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

~~19.~~ 18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

~~20.~~ 19. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under either section 43-1081 or 43-1081.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1081 or 43-1081.01, as applicable.

~~21.~~ 20. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

~~22.~~ 21. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

~~23.~~ 22. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization or a public school for which a credit is claimed under section 43-1089 or 43-1089.01.

~~24.~~ 23. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

~~25.~~ 24. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

~~26.~~ 25. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1081.02.

~~27.~~ 26. The amount of any special depreciation allowance allowed pursuant to section 168(k) of the internal revenue code.

Sec. 10. Section 43-1022, Arizona Revised Statutes, is amended to read:

43-1022. Subtractions from Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.

1 2. Benefits, annuities and pensions in an amount totaling not more
2 than two thousand five hundred dollars received from one or more of the
3 following:

4 (a) The United States government service retirement and disability
5 fund, retired or retainer pay of the uniformed services of the United States,
6 the United States foreign service retirement and disability system and any
7 other retirement system or plan established by federal law.

8 (b) The Arizona state retirement system, the corrections officer
9 retirement plan, the public safety personnel retirement system, the elected
10 officials' retirement plan, an optional retirement program established by the
11 Arizona board of regents under section 15-1628, an optional retirement
12 program established by a community college district board under section
13 15-1451 or a retirement plan established for employees of a county, city or
14 town in this state.

15 3. A beneficiary's share of the fiduciary adjustment to the extent
16 that the amount determined by section 43-1333 decreases the beneficiary's
17 Arizona gross income.

18 4. The amount of any distributions from an individual retirement
19 account as provided for in section 408 of the internal revenue code or from
20 a qualified retirement plan of a self-employed individual as provided for in
21 section 401 of the internal revenue code to the extent that total adjustments
22 made pursuant to this paragraph in all tax years do not exceed the total of
23 all contributions made by the taxpayer to such plans prior to December 31,
24 1975, which were included in computing Arizona taxable income.

25 5. The amount of income on an installment receivable which is
26 recognized pursuant to the internal revenue code and which has already been
27 recognized on the death of the taxpayer for purposes of this title for tax
28 years ending before January 1, 1990.

29 6. Interest income received on obligations of the United States, less
30 any interest on indebtedness, or other related expenses, and deducted in
31 arriving at Arizona gross income, which were incurred or continued to
32 purchase or carry such obligations.

33 7. The amount of any income tax refunds which were received from
34 states other than Arizona and which were included as income in computing
35 federal adjusted gross income.

36 8. Annuity income included in federal adjusted gross income pursuant
37 to section 72 of the internal revenue code if the first payment with respect
38 to such annuity was received prior to December 31, 1978.

39 9. The excess of a partner's share of income required to be included
40 under section 702(a)(8) of the internal revenue code over the income required
41 to be included under chapter 14, article 2 of this title.

42 10. The excess of a partner's share of partnership losses determined
43 pursuant to chapter 14, article 2 of this title over the losses allowable
44 under section 702(a)(8) of the internal revenue code.

1 11. The amount by which the adjusted basis of property described in
2 this paragraph and computed pursuant to this title and the income tax act of
3 1954, as amended, exceeds the adjusted basis of such property computed
4 pursuant to the internal revenue code. This paragraph shall apply to all
5 property which is held for the production of income and which is sold or
6 otherwise disposed of during the taxable year other than depreciable property
7 used in a trade or business.

8 12. The amount allowed by section 43-1024 for amortization, by a
9 qualified defense contractor certified by the department of commerce under
10 section 41-1508, of a capital investment for private commercial activities.

11 13. The amount of gain included in federal adjusted gross income on the
12 sale or other disposition of a capital investment that a qualified defense
13 contractor has elected to amortize pursuant to section 43-1024.

14 14. The amount allowed by section 43-1025 for contributions during the
15 taxable year of agricultural crops to charitable organizations.

16 15. The portion of any wages or salaries paid or incurred by the
17 taxpayer for the taxable year that is equal to the amount of the federal work
18 opportunity credit, the empowerment zone employment credit, the credit for
19 employer paid social security taxes on employee cash tips and the Indian
20 employment credit that the taxpayer received under sections 45A, 45B, 51(a)
21 and 1396 of the internal revenue code.

22 16. The amount of prizes or winnings less than five thousand dollars
23 in a single taxable year from any of the state lotteries established and
24 operated pursuant to title 5, chapter 5, article 1, except that all such
25 winnings before March 22, 1983, including periodic distributions from such
26 winnings made after March 22, 1983, may be subtracted.

27 17. The amount of exploration expenses that is determined pursuant to
28 section 617 of the internal revenue code, that has been deferred in a taxable
29 year ending before January 1, 1990 and for which a subtraction has not
30 previously been made. The subtraction shall be made on a ratable basis as
31 the units of produced ores or minerals discovered or explored as a result of
32 this exploration are sold.

33 18. The amount included in federal adjusted gross income pursuant to
34 section 86 of the internal revenue code, relating to taxation of social
35 security and railroad retirement benefits.

36 19. To the extent not already excluded from Arizona gross income under
37 section 112 of the internal revenue code, compensation received for active
38 service as a member of the armed forces of the United States for any month
39 during any part of which the member served in a combat zone as determined
40 under section 112 of the internal revenue code or in an area given the same
41 treatment as a combat zone for purposes of section 112 of the internal
42 revenue code.

43 20. The amount of unreimbursed medical and hospital costs, adoption
44 counseling, legal and agency fees and other nonrecurring costs of adoption
45 not to exceed three thousand dollars. In the case of a husband and wife who

1 file separate returns, the subtraction may be taken by either taxpayer or may
2 be divided between them, but the total subtractions allowed both husband and
3 wife shall not exceed three thousand dollars. The subtraction under this
4 paragraph may be taken for the costs that are described in this paragraph and
5 that are incurred in prior years, but the subtraction may be taken only in
6 the year during which the final adoption order is granted.

7 21. The amount authorized by section 43-1027 for the taxable year
8 relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

9 22. With respect to a medical savings account established pursuant to
10 section 43-1028:

11 (a) An eligible individual may subtract:

12 (i) The amount of contributions made by the individual's employer
13 during the taxable year to the individual's medical savings account pursuant
14 to section 43-1028 to the extent that the employer contributions are included
15 in the individual's federal adjusted gross income.

16 (ii) The amount deposited by the individual in the account during the
17 taxable year to the extent that the individual's contributions are included
18 in the individual's federal adjusted gross income.

19 (b) The individual's employer may subtract the amount of contributions
20 made by the employer to a medical savings account established on the
21 individual's behalf to the extent that the contributions are not deductible
22 under the internal revenue code.

23 23. The amount by which a net operating loss carryover or capital loss
24 carryover allowable pursuant to section 43-1029, subsection F exceeds the net
25 operating loss carryover or capital loss carryover allowable pursuant to
26 section 1341(b)(5) of the internal revenue code.

27 24. Any amount of qualified educational expenses that is distributed
28 from a qualified state tuition program determined pursuant to section 529 of
29 the internal revenue code and that is included in income in computing federal
30 adjusted gross income.

31 25. Any item of income resulting from an installment sale that has been
32 properly subjected to income tax in another state in a previous taxable year
33 and that is included in Arizona gross income in the current taxable year.

34 26. The amount authorized by section 43-1030 relating to holocaust
35 survivors.

36 27. The amount authorized by section 43-1031 for constructing an energy
37 efficient residence.

38 28. With respect to property for which the depreciation allowance
39 pursuant to section 168(k) of the internal revenue code was added under
40 section 43-1021, paragraph 27 26, an amount equal to three-sevenths of the
41 amount of depreciation allowed pursuant to section 167(a) of the internal
42 revenue code as computed on the adjusted basis provided pursuant to section
43 168(k)(1)(B) of the internal revenue code.

44 29. With respect to property that is sold or otherwise disposed of
45 during the taxable year by a taxpayer that complied with section 43-1021,

1 paragraph 27 26 with respect to that property, the amount of depreciation
2 that would have been allowed pursuant to section 167(a) of the internal
3 revenue code computed without regard to section 168(k) of the internal
4 revenue code to the extent that the amount has not already reduced Arizona
5 taxable income in the current or prior taxable years.

6 Sec. 11. Section 43-1029, Arizona Revised Statutes, is amended to
7 read:

8 43-1029. Restoration of a substantial amount held under claim
9 of right; computation of tax

10 A. This section applies if:

11 1. An item of income was included in gross income for a prior taxable
12 year or years because it appeared that the taxpayer had an unrestricted right
13 to the item.

14 2. A deduction would be allowable under the internal revenue code or
15 this title for the taxable year, without application of section 1341(b)(3)
16 of the internal revenue code or section 43-1021, paragraph 21 20, because
17 after the close of the prior taxable year or years it was established that
18 the taxpayer did not have an unrestricted right to all or part of the item.

19 3. The amount of the deduction exceeds three thousand dollars.

20 B. If all of the conditions in subsection A of this section apply, the
21 tax imposed by this chapter for the taxable year is an amount equal to the
22 tax for the taxable year computed without the deduction, minus the decrease
23 in tax under this chapter for the prior taxable year or years that would
24 result solely from excluding the item or portion of the item from gross
25 income for the prior taxable year or years.

26 C. If the decrease in tax exceeds the tax imposed by this chapter for
27 the taxable year, computed without the deduction, the excess is considered
28 to be a payment of tax on the last day prescribed by law for the payment of
29 tax for the taxable year and shall be refunded or credited in the same manner
30 as if it were an overpayment for the taxable year.

31 D. Subsection B of this section does not apply to any deduction that
32 is allowable with respect to an item that was included in gross income by
33 reason of the sale or other disposition of stock in trade of the taxpayer,
34 or other property of a kind that would properly have been included in the
35 inventory of the taxpayer on hand at the close of the prior taxable year, or
36 property that is held by the taxpayer primarily for sale to customers in the
37 ordinary course of the taxpayer's trade or business. This subsection does
38 not apply if the deduction arises out of refunds or repayments with respect
39 to rates made by a regulated public utility that is listed in section
40 7701(a)(33)(A) through (H) of the internal revenue code, if the refunds or
41 repayments are:

42 1. Required to be made by the government, political subdivision,
43 agency or instrumentality referred to in that section.

44 2. Required to be made by an order of a court.

1 3. Made in settlement of litigation or under threat or imminence of
2 litigation.

3 E. If the exclusion under subsection B of this section results in:

4 1. A net operating loss for the prior taxable year or years for
5 purposes of computing the decrease in tax for the prior year or years under
6 subsection B of this section:

7 (a) The loss shall be:

8 (i) Carried over under this chapter to the same extent and in the same
9 manner as was provided under prior law for taxable years beginning on or
10 before December 31, 1989.

11 (ii) Carried back and carried over to the same extent and in the same
12 manner as provided under section 172 of the internal revenue code for taxable
13 years beginning from and after December 31, 1989.

14 (b) No carryover beyond the taxable year may be taken into account.

15 2. A capital loss for the prior taxable year or years, for purposes
16 of computing the decrease in tax for the prior taxable year or years under
17 subsection B of this section:

18 (a) The loss shall be carried back and carried over to the same extent
19 and in the same manner as is provided under section 1212 of the internal
20 revenue code.

21 (b) No carryover beyond the taxable year may be taken into account.

22 F. In computing Arizona taxable income for taxable years subsequent
23 to the current taxable year, the net operating loss or capital loss
24 determined in subsection E of this section shall be taken into account to the
25 same extent and in the same manner as a net operating loss or capital loss
26 sustained for prior taxable years.

27 Sec. 12. Repeal

28 Section 43-1075, Arizona Revised Statutes, is repealed.

29 Sec. 13. Section 43-1121, Arizona Revised Statutes, is amended to
30 read:

31 43-1121. Additions to Arizona gross income; corporations

32 In computing Arizona taxable income for a corporation, the following
33 amounts shall be added to Arizona gross income:

34 1. The amounts computed pursuant to section 43-1021, paragraphs 3
35 through 9, ~~13~~ 12 and ~~27~~ 26.

36 2. The amount of dividend income received from corporations and
37 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
38 revenue code.

39 3. Taxes which are based on income paid to states, local governments
40 or foreign governments and which were deducted in computing federal taxable
41 income.

42 4. Expenses and interest relating to tax-exempt income on indebtedness
43 incurred or continued to purchase or carry obligations the interest on which
44 is wholly exempt from the tax imposed by this title. Financial institutions,

1 as defined in section 6-101, shall be governed by section 43-961, paragraph
2 2.

3 5. Commissions, rentals and other amounts paid or accrued to a
4 domestic international sales corporation controlled by the payor corporation
5 if the domestic international sales corporation is not required to report its
6 taxable income to this state because its income is not derived from or
7 attributable to sources within this state. If the domestic international
8 sales corporation is subject to article 4 of this chapter, the department
9 shall prescribe by rule the method of determining the portion of the
10 commissions, rentals and other amounts which are paid or accrued to the
11 controlled domestic international sales corporation and which shall be
12 deducted by the payor. "Control" for purposes of this paragraph means direct
13 or indirect ownership or control of fifty per cent or more of the voting
14 stock of the domestic international sales corporation by the payor
15 corporation.

16 6. Federal income tax refunds received during the taxable year to the
17 extent they were deducted in arriving at Arizona taxable income in a previous
18 year.

19 7. The amount of net operating loss taken pursuant to section 172 of
20 the internal revenue code.

21 8. The amount of exploration expenses determined pursuant to section
22 617 of the internal revenue code to the extent that they exceed seventy-five
23 thousand dollars and to the extent that the election is made to defer those
24 expenses not in excess of seventy-five thousand dollars.

25 9. Amortization of costs incurred to install pollution control devices
26 and deducted pursuant to the internal revenue code or the amount of deduction
27 for depreciation taken pursuant to the internal revenue code on pollution
28 control devices for which an election is made pursuant to section 43-1129.

29 10. The amount of depreciation or amortization of costs of child care
30 facilities deducted pursuant to section 167 or 188 of the internal revenue
31 code for which an election is made to amortize pursuant to section 43-1130.

32 11. Arizona state income tax refunds received, to the extent the amount
33 of the refunds is not already included in Arizona gross income, if a tax
34 benefit was derived by deduction of this amount in a prior year.

35 12. The amount paid as taxes on property in this state by a qualified
36 defense contractor with respect to which a credit is claimed under section
37 43-1166.

38 13. The loss of an insurance company that is exempt under section
39 43-1201 to the extent that it is included in computing Arizona gross income
40 on a consolidated return pursuant to section 43-947.

41 14. The amount by which the depreciation or amortization computed under
42 the internal revenue code with respect to property for which a credit was
43 taken under section 43-1169 exceeds the amount of depreciation or
44 amortization computed pursuant to the internal revenue code on the Arizona
45 adjusted basis of the property.

1 15. The amount by which the adjusted basis computed under the internal
2 revenue code with respect to property for which a credit was claimed under
3 section 43-1169 and which is sold or otherwise disposed of during the taxable
4 year exceeds the adjusted basis of the property computed under section
5 43-1169.

6 16. The amount by which the depreciation or amortization computed under
7 the internal revenue code with respect to property for which a credit was
8 taken under either section 43-1170 or 43-1170.01 exceeds the amount of
9 depreciation or amortization computed pursuant to the internal revenue code
10 on the Arizona adjusted basis of the property.

11 17. The amount by which the adjusted basis computed under the internal
12 revenue code with respect to property for which a credit was claimed under
13 either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed
14 of during the taxable year exceeds the adjusted basis of the property
15 computed under section 43-1170 or 43-1170.01, as applicable.

16 18. The deduction referred to in section 1341(a)(4) of the internal
17 revenue code for restoration of a substantial amount held under a claim of
18 right.

19 19. The amount by which a capital loss carryover allowable pursuant to
20 section 1341(b)(5) of the internal revenue code exceeds the capital loss
21 carryover allowable pursuant to section 43-1130.01, subsection F.

22 20. Any amount deducted in computing Arizona taxable income as expenses
23 for installing solar stub outs or electric vehicle recharge outlets in this
24 state with respect to which a credit is claimed pursuant to section 43-1176.

25 21. Any wage expenses deducted pursuant to the internal revenue code
26 for which a credit is claimed under section 43-1175 and representing net
27 increases in qualified employment positions for employment of temporary
28 assistance for needy families recipients.

29 22. Any amount of expenses that were deducted pursuant to the internal
30 revenue code and for which a credit is claimed under section 43-1178.

31 23. Any amount deducted for conveying ownership or development rights
32 of property to an agricultural preservation district under section 48-5702
33 for which a credit is claimed under section 43-1180.

34 24. The amount of any deduction that is claimed in computing Arizona
35 gross income and that represents a donation of a school site for which a
36 credit is claimed under section 43-1181.

APPROVED BY THE GOVERNOR APRIL 8, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2004.

Passed the House February 3, 2004

Passed the Senate March 30, 2004

by the following vote: 57 Ayes,

by the following vote: 36 Ayes,

0 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Ken Bennett
President of the Senate

Norman L. Moore
Chief Clerk of the House

Channing Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2040

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 5, 2004,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Elak
Speaker of the House
Herman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5th day of April, 2004,

at 2:40 o'clock P. M.

Vernice L. Brewer
Secretary to the Governor

Approved this 8 day of

April, 2004,

at 4:30 o'clock A. M.

J. N. K.
Governor of Arizona

H.B. 2040

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of April, 2004,

at 10:45 o'clock A. M.

Vernice K. Brewer
Secretary of State